IN THE U.S. PATENT AND TRADEMARK OFFICE

Appellant:	Caitlyn Curtin
Application No.:	10/733,414
Art Unit:	3743
Filed:	December 12, 2003
Examiner:	Stephen Michael Gravini
For:	HANDS-FREE HAIR AND BODY DRYER
Attorney Docket No.:	3681-000001

REPLY BRIEF ON APPEAL

MAIL STOP APPEAL BRIEF - PATENTS
Customer Service Window
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May 17, 2010

Dear Sir/Madam:

In response to the Examiner's Answer the Appellant submits the following reply.

ARGUMENTS:

A. The Section 112, second paragraph rejections

The Examiner argues that claims 1-14 violate 35 U.S.C. §112, second paragraph.

35 U.S.C. §112, second paragraph reads as follows: "The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention".

Thus, the focus of §112, second paragraph is the claims.

In the Examiner's Answer the Examiner first appears to take the position that the phrases "movement means" and "control means" are not clearly shown in the figures of the instant specification. This appears to be a rejection under §112, first paragraph which the Appellant addressed in her opening brief.

Nonetheless, regardless of the part of §112 meant to be invoked by the Examiner, the Appellant submits that both the movement means and control means are clearly set forth in the claims and are sufficiently supported by both the text and figures of the instant specification to satisfy §112.

(a) "movement means"

As explained in Appellant's opening brief, the claimed "movement means" is described as consisting of first movement means 2 and second movement means 3 in FIG. 1 (see page 2) which is described as depicting "a hair and body dryer 1". The specification goes on to more specifically describe the operation of the first and second movement means 2, 3 as used as a part of the hair and body dryer 1 (see Specification paragraphs **[0011]** through **[0014]**). FIG. 1 also clearly shows the means 2, 3 as a part of the hair and body dryer 1. Specific structural examples of the first and second movement means 2, 3 are described in the text and figures of the specification.

For example, the first movement means is described as comprising a "pivoting mechanism 2a or the like to move the dryer 1 to a desired position".

This pivoting mechanism 2a is not linked to any other structure in the specification except the first movement means.

The specification also describes, in the text and figures, a specific example of a second movement means. For example, the second movement means 3 "may also comprise a pivoting mechanism 3a to further allow the dryer 1 and diffuser 5 to be positioned over different parts of the surface of the head and body". The pivoting mechanism 3a is not linked to any other structure in the specification except the second movement means.

As the above explanation illustrates, the specification's description and the use of the phrase "movement means" in the claims is sufficient and definite: movement means must be able to position a hair and body dryer over different parts of the surface of a head and body, like mechanism 3a.

(b) "control means"

As explained in the Appellant's opening brief, the control means is shown in FIGs 1 and 2 and described in paragraphs **[0018]** through **[0020]** and **[0025]** as element "6".

In the specification the control means 6 is described as "a removable or built-in remote control for controlling the power on/off functions of the dryer 1, and/or controlling the initiation, cessation and positioning of the movement means 2, 2a and 3, 3a." In more detail, the control means 6 is described as comprising "circuitry or the like which is programmed (or programmable) to send instructions to both movement means 2, 2a, 3, 3a that result in an associated movement of lower body 2b of the dryer 1 or upper body 3b of the dryer 1 through a wide range of angles. Each movement of lower or upper body 2b, 3b results in a new position of diffuser 5 over a person's head or body."

In addition, the control means 6 is described as comprising "an infrared or radio frequency transceiver for detecting the presence or absence of a user, i.e., whether a user remains close enough to the dryer 1 so that the dryer 1 remains on. For example, if a person walks a far enough distance away from

the dryer 1, the control means 6 may detect such movement and send a signal to the power source of the dryer 1 in order to shut the dryer off."

Yet further, the control means 6 is described as comprising "a timer which, regardless of the movement of a user, will track the amount of time the dryer 1 has been operating and automatically shut the dryer off if it exceeds a certain threshold (e.g., 15 minutes)."

Finally, the control means 6 is described as containing "sensors and appropriate circuitry to measure the internal temperature of the dryer 1 including the muffler 9 in order to determine whether to disconnect the dryer 1 from its power supply 7 in order to meet United Laboratories specifications or the like and to prevent the dryer 10 from malfunctioning or catching fire."

As the above explanation illustrates, the specification's description and the use of the phrase "control means" in the claims is sufficient and definite.

(c) the phrase "or the like"

The Examiner further argues that the phrase "or the like" in the specification can be construed as "any type" of movement means and "any type" of control means.

To begin with, the phrase "or the like" is not set forth in the claims. Thus, it is legal error to interpret the claims based on an interpretation of phrases that are not set forth in the claims.

Instead, the phrase "or the like" is used in the parts of the specification that provide examples of the phrases movement means and control means. For example, the specification uses the phrase "or the like" to describe the first movement means as comprising a "pivoting mechanism 2a or the like to move the dryer 1 to a desired position" and to describe the control means as "circuitry or the like which is programmed (or programmable) to send instructions to both movement means 2, 2a, 3, 3a that result in an associated movement of lower body 2b of the dryer 1 or upper body 3b of the dryer 1 through a wide range of angles".

Thus, as used in the specification the phrase "or the like" means --or its equivalent--. That is, rather than set forth all of the possible, structural equivalents of the movement and control means (a practical impossibility), the Appellant simply wanted to provide notice to the reader that the specific examples set forth in the specification and shown in the figures were but examples of such equivalent means.

(d) the control means is not merely an algorithm

The Examiner further argues that the control means is "merely an algorithm" because the specification describes one example of the control means as circuitry or the like which is programmed (or programmable) to send instructions to both movement means resulting in movement of lower or upper body. This is untenable.

Rather than "only disclose a general purpose computer as the structure designed to perform [a] function" as the Examiner alleges the specification discloses specific examples of the control means such as, a built-in remote control, an infrared or radio frequency transceiver, a timer or sensors and appropriate circuitry to measure the internal temperature of a dryer.

Yet further, the specification makes no mention of an algorithm as the Examiner alleges. Instead, fairly stated the specification clearly provides structural, hardware examples of the claimed control means.

(ii) The "Means" Clauses Are Clearly Linked To A Dryer Used To Dry A Person' Body

In order to reject the claims based on Jones the Examiner interprets the claimed dryer as being akin to a dryer that is used to dry a surface of a user's body inside a car as the car is driven through a car wash.

This strains credulity. At no time does the specification discuss drying a car, a person that is sitting inside a car, or a person sitting inside a car as the car is driven through a car wash.

Still further, the Examiner interprets the phrases movement means and control means as "any" means. However, under §112, sixth paragraph an equivalent means must be equivalent to the examples set forth in the specification, not "any" means.

The Examiner's interpretation of the "means" clauses is clearly inconsistent with the specification, and, therefore, impermissible.

B. The Section 102 Rejections

In her opening brief the Appellant argued that Jones discloses a dryer for a motor vehicle and is wholly unrelated to drying a surface of a user's body.

In response the Examiner argues that the claim phrase "to dry a surface of a user's body" is a statement of intended use. Appellant disagrees. Rather than be a statement of intended use, this phrase describes the function of the diffuser, which is drying the surface of a user's body.

Further, the Appellant notes the dryer disclosed in Jones is not capable of drying the surface of a user's body as the Examiner appears to imply. Certainly Jones does not disclose such a use, nor would one skilled in the art interpret Jones' dryer as being used as the Examiner alleges.

In their opening brief the Appellant also argued that "that one of ordinary skill in the art upon reading Jones would never think of using the dryer disclosed in Jones to dry a surface of a user's body". In rebuttal, the Examiner responds that the Appellant has confused the issues of obviousness and anticipation. Appellant has not done so.

Interpretation of a claim term must be done prior to applying the test for anticipation or obviousness. Further, the interpretation of one skilled in the art is sometimes the most valuable interpretation.

Here, the Appellant submits that those skilled in the art, upon reading the claims in light of the specification would not interpret the phrase "dryer" to include a dryer used dry a motor vehicle, as the Examiner alleges.

The Examiner also takes the position that because the Appellant pointed out that Jones teaches away from the use of prior art motor vehicle dryers that included side nozzles that were oscillated "over a very wide arcuate range" that the Appellant has somehow admitted that Jones expressly "meets [the] argued claimed feature". This is confusing to the Appellant.

As the Appellant indicated in her opening brief, Jones states that "however, the inventors herein have discovered that the oscillation of the side nozzles should be limited to much narrower arcuate range." Thus, Jones does not expressly meet the claimed feature because Jones teaches away from using movement means to move a diffuser over a wide range of angles. Nor is the mention of prior art motor vehicle dryers and their range of operation an anticipatory reference of the claimed dryers.

C. The Section 103 Rejections

The Examiner alleges that the Appellant's positions in her opening brief do not comply with 37 CFR 1.111(b). Appellant disagrees.

In their opening brief the Appellant specifically stated that the subject matter of each dependent claim was patentable over the cited combination of references because the additional, secondary references did not overcome the deficiencies of the primary reference(s) and further specifically stated that each dependent claim was patentable over the combination of references for the same reasons applicable to the primary reference(s).

In addition, the Appellant set forth separate arguments establishing the fact the Examiner's combination of references (not individual references) was impermissible because such combinations would require one or more of the references to be modified in such a way that a references' intended purpose would be rendered unsatisfactory and/or its principle of operation would have to change.

Conclusion:

Appellant respectfully request that members of the Board reverse the decision of the Examiner and allow claims 1-14.

The Commissioner is authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-3777 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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